

6/25/01

* REDLINE VERSION - EXCERPTS

LOCAL CIVIL RULES

for the

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

(as amended and corrected with amendments through
~~December~~ August 1, 2000 2001)

* Selected pages showing significant changes
("R1-R25").

NOTE: Added text in footnotes is shown with single underline.

SCOPE AND PURPOSE OF LOCAL CIVIL RULES

1.01: *Scope.* These Local Civil Rules of practice shall govern the conduct of the United States District Court for the District of South Carolina, except when the conduct of this Court is governed by federal statutes and rules. These rules shall be cited: "Local Civil Rule ____ DSC."

1.02: *Suspension or Modification.* For good cause shown in a particular case, the Court may suspend or modify any Local Civil Rule.

1.03: *Modification and Implementation of Federal Rules.*

[Deleted effective December 1, 2000.]

SUMMONS

1.04: *District Court Web Site.* This District maintains a web site (www.scd.uscourts.gov) from which the federal and local rules of procedure and related materials may be obtained. Frequently requested information such as court phone numbers and addresses, as well as copies of each judge's standard orders, may also be obtained from the web site.

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

5.01: *Filing of Discovery.* Interrogatories under Rule 33 Fed. R. Civ. P. and responses thereto, Requests under Rule 34 Fed. R. Civ. P. and responses thereto, and Requests for Admissions under Rule 36 Fed. R. Civ. P. and responses thereto (collectively "discovery material") shall be served upon other counsel or parties, but shall not be filed with the Court. Transcripts of depositions taken under Rule 30 or Rule 31 Fed. R. Civ. P. (collectively "deposition") shall not be filed with the Court. The party responsible for serving the discovery material or taking the deposition shall retain the original and become the custodian thereof.

If relief is sought with respect to any discovery material or deposition, a copy of the relevant portion of the discovery material or deposition shall be filed with the Court contemporaneously with the filing or presentation of the request for relief. *See* Local Civil Rules 7.04 and 7.06.

If discovery material or depositions are to be used at trial or are necessary to resolution of a pretrial motion which might result in a final order on any issue, the portions to be used shall be filed with the Clerk of Court at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated.

When original discovery material or an original deposition is needed for appeal purposes and is not in the record, upon application and order of the Court the necessary discovery material or deposition shall be filed with the Clerk of Court.

5.02: *Filing with the Clerk; Use of Drop Boxes.* The Court is open on all days except Saturdays, Sundays, and legal holidays. During normal business hours, documents ~~can~~may be filed with the Intake Section of the ~~Clerk's~~Clerk of Court's Office at the Strom Thurmond Courthouse in Columbia, the Hollings Judicial Center in Charleston, the Clement F. Haynsworth Federal Building in Greenville, and the McMillan Federal Building in Florence.

If for any reason it is necessary for documents to be filed with the Court between the hours of 5:00 p.m. and 12:00 midnight on any business day for documents due that day, the Court has placed a drop box at each of these locations. These drop boxes have the words "Clerk's Office, U.S. District Court, Filings after 5:00 p.m. Only." Documents placed in the drop boxes between the hours of 5:00 p.m. and 12:00 midnight will be considered to have been filed on that business day.

5.03: *Filing Documents under Seal.* Absent a requirement to seal in the governing rule, statute, or order, any party seeking to file documents under seal shall follow the mandatory procedure described below. Failure to obtain prior approval as required by this Rule shall result in summary denial of any request or attempt to seal filed documents. Nothing in this Rule limits the ability of the parties, by agreement, to restrict access to documents which are not filed with the Court. See Local Civil Rule 26.08.

- (A) A party seeking to file documents under seal shall file and serve a "Motion to Seal" accompanied by a memorandum. See Local Civil Rule 7.04. The memorandum shall: (1) identify, with specificity, the documents or portions

thereof for which sealing is requested; (2) state the reasons why sealing is necessary; (3) explain (for each document or group of documents) why less drastic alternatives to sealing will not afford adequate protection; and (4) address the factors governing sealing of documents reflected in controlling case law. E.g., *Ashcroft v. Conoco, Inc.*, 218 F.3d 288 (4th Cir. 2000); and *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir.1984). A non-confidential descriptive index of the documents at issue shall be attached to the motion.

A separately sealed attachment labeled "Confidential Information to be Submitted to Court in Connection with Motion to Seal" shall be submitted with the motion. This attachment shall contain the documents at issue for the Court's *in camera* review and shall not be filed. The Court's docket shall reflect that the motion and memorandum were filed and were supported by a sealed attachment submitted for *in camera* review.

- (B) The Clerk shall provide public notice of the Motion to Seal in the manner directed by the Court. Absent direction to the contrary, this may be accomplished by docketing the motion in a manner that discloses its nature as a motion to seal.

MOTIONS FOR EXTENSION, ENLARGEMENT, OR SHORTENING OF TIME

6.01: *Motion for Enlargement or Shortening of Time, Extension of Discovery.* Any application, including a proposed consent order, for enlargement or shortening of time (except as otherwise allowed by consent under Local Civil Rules 12.01, 29.01, and 37.01) must be accompanied by an affidavit or other statement giving the reasons therefor. =

Motions for extension should also include the following information: (1) the date of the current deadline; (2) whether the deadline has previously been extended; (3) the number of additional days requested, as well as the proposed date of the new deadline; and (4) whether the extension requested would affect other deadlines.¹ A proposed amended scheduling order in the form used by the assigned judge, including all deadlines not then expired, shall be attached to the motion. Motions for extension of time for completion of discovery will be granted only in unusual cases and upon a showing that the parties have diligently pursued discovery during the ~~original~~originally specified period.

This showing requires a specification of the discovery (including depositions by witness name and date) which has been completed and the depositions (including witness name) and other discovery which remain to be completed.

6.02: *Protection Requests.* A request for protection from trial or other appearance shall be directed to the judge to whom an action is assigned. Such requests should: (1) identify the action(s) in which protection is sought by short caption and civil action number; (2) identify the dates and reasons for which protection is sought; (3) provide any other information relevant to the request; and (4) comply with any other requirements imposed by the judge to whom the action is assigned.

¹ Scheduling orders generally allow a minimum amount of time between the various deadlines listed in Local Civil Rules 16.01 and 16.02 to ensure the orderly progress of the case. (E.g., sufficient time is required between the motion deadline and trial date to brief and resolve any motion.)

PLEADINGS ALLOWED: FORM OF MOTIONS

7.01:—*Filing of Motions.* All motions shall be filed with the Clerk of Court.

7.02: *Duty to Consult before Filing any Motion.* ~~At~~Absent exemption in the governing Federal or Local Civil Rule or as set forth below, all motions filed shall contain an affirmation by the movant's counsel that prior to filing the motion he or she conferred or attempted to confer with opposing counsel and attempted in good faith to resolve the matter contained in the motion. If a conference could not be held despite an attempt to do so, counsel shall explain why such conference could not be held. Counsel is under no duty to consult with a *pro se* litigant. The following motions are excluded from this Local Civil Rule:

- (A) Motion to dismiss;
- (B) Motion for summary judgment;
- (C) Motion for new trial or judgment as a matter of law;
- (D) Other similar dispositive motions; and
- (E) Motions filed in real estate mortgage foreclosure cases.

7.03: *Motions to be Promptly Filed.* Attorneys are expected to file motions immediately after the issues raised thereby are ripe for adjudication.

7.04: *Supporting Memoranda.* All motions made other than in a hearing or trial or to compel discovery shall be timely filed with an accompanying supporting memorandum which shall be filed and made part of the public record. However, unless otherwise directed by the Court, a supporting memorandum is not required if a full explanation of the motion as set forth in Local Civil Rule 7.05 is contained within the motion and a memorandum would serve no useful purpose. Where appropriate, motions shall be accompanied by affidavits or other supporting documents.

Any motion to compel discovery shall set forth the grounds for the motion, including a statement explaining why the discovery should be had within the context of the action (where the motion challenges objections); or the relevant dates of service and facts demonstrating noncompliance or supporting a challenge to the sufficiency of the response. Legal authorities need not be included in the statement unless unusual legal issues are present or a privilege has been asserted. Relevant portions of the discovery material shall be filed with the motion. *See* Local Civil Rule 5.01.

7.05: *Form and Content of Memoranda.*

- (A) A memorandum shall contain:
 - (1) A concise summary of the nature of the case;

- (2) A concise statement of the facts that pertain to the matter before the Court for ruling with reference to the location in the record;
- (3) The argument (brevity is expected) relating to the matter before the Court for ruling with appropriate citations;
- (4) Copies of any unpublished decisions, out-of-region court decisions,² or decisions published in the various specialized reporting services (e.g., CCH Tax Reports, Labor Reports, UCC Reporting Service, etc.);
- (5) Where the ~~supporting~~ memorandum opposes a motion for summary judgment, a ~~short and~~ concise statement of the material facts in dispute shall be set forth with reference to the location in the record;
- (6) Any special content required by any Federal or Local Civil Rule governing the subject matter of the motion.

(B) Unless an exception is granted by the Court, no memorandum shall exceed:

- (1) 35 double-spaced pages, in the case of an initial brief of any party (Local Civil Rule 7.04); and
- (2) 15 double-spaced pages, in the case of any reply (Local Civil Rule 7.07).

The page limitation is exclusive of affidavits, supporting documentation, and copies of authority required to be attached by Local Civil Rule 7.05(A)(4).

7.06: *Responses to Motions.* Any memorandum or response of an opposing party must be filed with the Clerk of Court within fifteen (15) days of the service of the motion unless the ~~court~~ Court imposes a different deadline. If no memorandum in opposition is filed within fifteen (15) days of the date of service, the Court will decide the matter on the record and such oral argument as the movant may be permitted to offer, if any.

² Cases published in the South Eastern Reporter, Federal Supplement, Federal Reporter, or Supreme Court ReportsReporter need not be provided.

³ Additional content and timing requirements for specific motions are addressed in separate rules relating to the subject matter of the motion. E.g., Local Civil Rules 5.03 (Filing Documents under Seal); 6.01 (Motion for Enlargement or Shortening of Time); 6.02 (Protection Requests); 16.00(C) (Stay of Deadlines and Entry of Scheduling Order); 30.04(C) (Conduct During Depositions – motion required within five days of directing a witness not to respond); 83.I.05 (Appearances by Attorneys not Admitted in the District); and 83.I.07 (Withdrawal of Appearance).

PRETRIAL CONFERENCES, SCHEDULING AND MANAGEMENT

In order to accommodate the requirements of Fed. R. Civ. P. 16 (scheduling conferences and orders) and to facilitate compliance with Fed. R. Civ. P. 26(a)(1) (~~automatic~~required initial disclosures) and 26(f) (conference of the parties and report to the Court) in cases not exempted below, this District adopts the procedures set out in Rules 16.01-16.02 below.

16.00: Exemptions and Stay of Deadlines.

- (A) Exempt Actions. Scheduling orders will generally not be entered in any action listed in Fed. R. Civ. P. 26(a)(1)(E) (categories of actions exempted from the federal rule initial disclosure and conference requirements). To the extent discovery is appropriate in any action covered by Fed. R. Civ. P. 26(a)(1)(E), it shall be governed by Local Civil Rule 26.04 absent entry of a specific scheduling order.
- (B) Non Exempt Pro Se Actions. In any action in which a party is proceeding without counsel ("*pro se*"), but which is not covered by Fed. R. Civ. P. 26(a)(1)(E)(iii) (prisoner *pro se* actions), the Court's initial order shall address whether the Fed. R. Civ. P. 26(f) conference or any other federal or local rule requirements addressed in Local Civil Rules 16.01-16.02 are waived.⁵ Except to the extent the requirements are waived, orders in *pro se* actions shall address all deadlines listed in Local Civil Rules 16.01-16.02.
- (C) Stay of Deadlines and Entry of Scheduling Orders. The Court may stay entry of the scheduling order(s) and all Federal and Local Civil Rule disclosure and conference requirements pending resolution of a motion to remand or to dismiss or other dispositive motion. Any party desiring a stay on this basis shall file a separate motion to stay which shall attach a proposed order. No consultation or separate memorandum is required.

⁵ Due to the special concerns raised by oral communications between counsel and unrepresented ("*pro se*") litigants, it is the general practice in this District to waive the Fed. R. Civ. P. 26(f) conference requirement when any party is proceeding *pro se*. See also, Local Civil Rule 7.02 (no consultation requirement in *pro se* actions). Because these concerns are not present as to written communications or submissions, it is the general practice in this District not to waive the disclosure requirements of Fed. R. Civ. P. 26(a)(1)-(3), the report requirement of Fed. R. Civ. P. 26(f), and the various requirements of Local Civil Rule 26 in a *pro se* action to which they otherwise apply. See Fed. R. Civ. P. 26(a)(1)(E) (exempting prisoner *pro se* actions from the 26(a)(1) requirements absent order to the contrary); Local Civil Rule 26.03(D) (addressing submission of Fed. R. Civ. P. 26(f) report when the conference requirement is waived).

16.01: *Pre-Scheduling Order.* =

- (A) Upon the appearance of a defendant, and to the extent the requirements of Fed. R. Civ. P. 26(a)(1) and (f) are not otherwise waived by the Court or Fed. R. Civ. P. 26(a)(1)(E), the Court shall either issue a tentative scheduling order which shall require a ~~Rule~~ Fed. R. Civ. P. 26(f) conference and report and shall become binding absent objection after such report or, by order, set deadlines for the following:
- (1) Fed. R. Civ. P. 26(f) conference of the parties (to be held no later than forty-five (45) days after the appearance of a defendant);
 - (2) Fed. R. Civ. P. 26(a)(1) required initial disclosures (to be made no later than fourteen (14) days after the Fed. R. Civ. P. 26(f) conference);⁶ and
 - (3) Fed. R. Civ. P. 26(f) report to the Court (to be filed no later than fourteen (14) days after the Fed. R. Civ. P. 26(f) conference).
- (B) The order shall include:
- (1) Notice to counsel that Local Civil Rule 26.03 lists additional queries to be answered in the Fed. R. Civ. P. 26(f) report and that the Court's general practices as to Scheduling Orders and Conferences are addressed by Local Civil Rule 16.02;
 - (2) Any special instructions for submission of the Fed. R. Civ. P. 26(f) report requested by the assigned judge;
 - (3) Information regarding the availability of alternative dispute resolution;
 - (4) A directive that plaintiff's counsel shall initiate scheduling of the Fed. R. Civ. P. 26(f) conference with all counsel known to plaintiff regardless of whether they have filed appearances; and
 - (5) The notice of right to consent to trial before a magistrate as discussed in Local Civil Rules 73.02(B)(1) and 73.03.
- (C) If additional parties make appearances following the issuance of the Local Civil Rule 16.01 Pre-Scheduling Order, the Clerk of Court shall immediately

⁶ Pursuant to Fed. R. Civ. P. 26(a)(1), the parties may, by stipulation, agree not to make some or all of the Rule 26(a)(1) initial disclosures. If such a stipulation is made, it shall be confirmed in writing between the parties. See Local Civil Rule 29.01.

forward the Pre-Scheduling Order and all attachments to those parties or their legal representatives (if represented).

- (D) Any extraordinary circumstances justifying modification of these deadlines shall be brought to the attention of the assigned judge as soon as practicable.

16.02: *Scheduling Conference and Scheduling Order.*

- (A) *Conference with the assigned judge*~~*Assigned Judge*~~. It is the normal practice in this District to issue the scheduling order based on the information received from the Fed. R. Civ. P. 26(f) report to the Court, including the disclosures required by Local Civil Rule 26.03, without further conference. If one or more parties believes a conference is justified by the particular circumstances of the case, they shall so inform the assigned judge by letter as soon as practicable.
- (B) *Trial date*~~*Date*~~. Unless otherwise directed by the Court, all cases shall be ready for trial on the date set for jury selection. Therefore, for scheduling purposes under the Federal Rules of Civil Procedure and the Local Civil Rules of this District, the jury selection date shall be deemed the trial date.
- (C) *Content of scheduling order*~~*Scheduling Order*~~. “[A]s soon as practicable but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant” (Fed. R. Civ. P. 16(b)), the Court shall issue a scheduling order setting deadlines for the following:
- (1) Filing of motions to join parties and to amend the pleadings (Fed. R. Civ. P. 16(b)(1));
 - (2) Exchange of Fed. R. Civ. P. 26(a)(2) expert witness disclosures (~~Fed. R. Civ. P. 26(a)(2))~~and filing of any related disclosure and certification required by the scheduling order;⁷
 - (3) Service of affidavits of records custodian witnesses proposed to be presented by affidavit at trial (*See* Fed. R. Evid. 803(6), 902(11), or 902(12) and Local Civil Rule 16.02(D)(3));

⁷ The majority of the judges in this District require filing of a document identifying the expert witnesses and certifying that the required disclosures have been made. This is intended to preclude disputes at trial as to whether disclosures were made. The disclosures themselves should not be filed absent order to the contrary.

GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE

[Former Local Civil Rule requirements as to automatic disclosures have been significantly modified in compliance with Federal Rule changes effective December 1, 2000. The former Local Civil Rule exemptions from automatic disclosure and expert witness disclosure requirements have been eliminated.]

26.01: *Interrogatories to be Answered by Each Party.* The following information is used for purposes of assigning cases and shall be filed with the Clerk of Court and served on all parties at the time a party first appears. In removed cases, the removing defendant shall file these responses with the removal papers. All other parties shall file responses no later than ten (10) days after service of the notice of removal. If a party fails to file the required responses on time, the Clerk of Court shall draw the requirement to the attention of the party (or counsel) and allow ~~a minimum of~~ ten (10) days to file responses. The Clerk of Court shall have the authority to extend the time for responding. Absent order to the contrary, categories of actions listed in Fed. R. Civ. P. 26(a)(1)(E) are exempt from the requirements of this Local Civil Rule.

- (A) State the full name, address, and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.
- (B) As to each claim, state whether it should be tried jury or nonjury and why.
- (C) State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent, subsidiary, partner, or affiliate; (2) each publicly owned company which owns ten percent or more of the outstanding shares or other indicia of ownership of the party; and (3) each publicly owned company in which the party owns ten percent or more of the outstanding shares.
- (D) State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division).
- (E) Is this action related in whole or in part to any other matter filed in this District, whether civil or criminal? If so, provide: (1) a short caption and the full case number of the related action; (2) an explanation of how the matters are related; and (3) a statement of the status of the related action. Counsel should disclose any cases which *may be* related regardless of whether they are still pending. Whether cases *are* related such that they should be assigned to a single judge will be determined by the Clerk of Court based on a

determination of whether the cases arise from the same or identical transactions, happenings, or events; involve the identical parties or property; or for any other reason would entail substantial duplication of labor if heard by different judges.¹¹

- (F) [*Defendants only.*] If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct identification.
- (G) [*Defendants only.*] If you contend that some other person or legal entity is, in whole or in part, liable to you or the party asserting a claim against you in this matter, identify such person or entity and describe the basis of said liability.

26.02: *Rules for Answering Court Interrogatories.* The following rules shall be adhered to in responding to the foregoing interrogatories and completing the Rule Fed. R. Civ. P. 26(f) report:

- (A) Only a signature by counsel is required if the party is represented; no party verification is required.
- (B) Each interrogatory shall be set forth immediately prior to the answer thereto.
- (C) Answers shall identify all attorneys representing a party by full name, district court identification number, firm name, mailing address, ~~email address (if any), and telephone,~~ and facsimile numbers. While not required, an e-mail address is also requested if counsel regularly utilizes e-mail for business communications.
- (D) In the event any question cannot be fully answered after the exercise of reasonable diligence, the party shall furnish as complete an answer as possible and shall supplement as soon as is feasible.
- (E) Responses pursuant to Local Civil Rules 26.01 and 26.03 may be relied on and used in the same manner as discovery responses obtained under the Federal Rules of Civil Procedure.
- (F) The provisions of Local Civil Rules 26.01 and 26.03 shall not apply, absent order to the contrary, in actions exempted from the requirements of Fed. R. Civ. P. 26(a)(1) and (f) by Fed. R. Civ. P. 26(a)(1)(E).

¹¹ This information is required in addition to completion of the "related cases" block on the JS44 Civil Cover Sheet. Although the Civil Cover Sheet requires only that you parties disclose *pending* related cases, this interrogatory and this District's assignment procedures require disclosure of *any prior or pending* related case whether civil or criminal. Therefore, both categories should be disclosed in response to this interrogatory as well as on the ~~JS44~~ JS 44 Civil Cover Sheet.

26.03: *Rule 26(f) Report.*

- (A) **Content.** In addition to the requirements set forth in Fed. R. Civ. P. 26(f) for a report to the Court, the parties shall include the following information in their Rule 26(f) report which shall be filed with the Court:
- (1) A short statement of the facts of the case;
 - (2) The names of fact witnesses likely to be called by the party and a brief summary of their expected testimony;
 - (3) The names and subject matter of expert witnesses (if no witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered);
 - (4) A summary of the claims or defenses with statutory and/or case citations supporting the same;¹²
 - (5) Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Local Civil Rule 16.02:
 - (a) Exchange of Fed. R. Civ. P. 26(a)(2) expert disclosures; and
 - (b) Completion of discovery.
 - (6) The parties shall inform the Court whether there are any special circumstances which would affect the time frames applied in preparing the scheduling order. *See generally* Local Civil Rule 16.02(C) (Content of Scheduling Order).
 - (7) The parties shall provide any additional information requested in the Pre-Scheduling Order (Local Civil Rule 16.01) or otherwise requested by the assigned judge.
- (B) *Form of ~~submission~~ Submission.* The parties are encouraged to submit a joint Fed. R. Civ. P. 26(f) report, but joint reports are not required. *See* Fed. R. Civ. P. Form 35. Any separate report shall be served on all parties.

~~26.04: (C)~~ *Exemptions.* Absent order to the contrary, this Rule shall not apply to the

¹² Generic references to the “general common, statutory or regulatory law” of the relevant jurisdiction will not be deemed an adequate response. Neither are lengthy discussions of commonly applied claims and defenses required. For most causes of action or defenses, a single citation to a single statute or case establishing the elements will suffice.

categories of action listed in Fed. R. Civ. P. 26(a)(1)(E) as those actions are exempt from the Fed. R. Civ. P. 26(f) conference and report requirements.

- (D) *Report without Conference.* In any action in which the parties are exempted from the Fed. R. Civ. P. 26(f) conference requirement, but in which the Court seeks information in the form of a Fed. R. Civ. P. 26(f) report as supplemented by the requirements of this Local Civil Rule, the parties shall respond to any query relating to agreement of the parties by stating their position as to the subject matter of the query. *See generally*, Local Civil Rule 16.00(B) (addressing special procedures in *pro se* actions).

26.04: *Pretrial Discovery for Civil Actions Exempted from Fed. R. Civ. P. 26(a)(1).* Pretrial discovery in all civil cases that are exempt under Fed. R. Civ. P. 26(a)(1)(E) must be completed within a period of ninety (90) days following the joinder of issues unless otherwise ordered. If any expert witnesses will be called, Fed. R. Civ. P. 26(a)(2) disclosures shall be made at least thirty (30) days before the close of discovery. Fed. R. Civ. P. 26(a)(3) disclosures shall be completed as set forth in that federal rule. No otherwise applicable deadline is waived absent order to that effect.¹³

In other appropriate cases not covered by Fed. R. Civ. P. 26(a)(1)(E), the Court may, by order, waive some or all of the otherwise applicable requirements and direct the parties to proceed under this Local Civil Rule. *See* Local Civil Rule 16.00 (discussing non-exempt *pro se* actions).

26.05: *Civil Pretrial Briefs.* All attorneys having civil cases set for trial shall furnish the Court a pretrial brief at least five (5) business days prior to the date set for jury selection in the term of court in which the case is set for trial unless another date is ordered by the Court. The pretrial brief shall contain the following information:

- (A) The name of each attorney, district court identification number, and the full name of each firm handling the case.
- (B) ~~Are there~~ A list of any motions ~~not already disposed of?~~ still pending.
- (C) A brief and concise statement of the facts upon which each claim or defense is based.
- (D) Additional legal authorities upon which each claim or defense is based not listed in the Fed. R. Civ. P. 26(f) report to the Court. *See* Local Civil Rule 26.03(A)(4).

¹³ Cases listed in Fed. R. Civ. P. 26(a)(1)(E) are expressly exempted from: (1) the initial disclosure requirements of Fed. R. Civ. P. 26(a)(1); (2) the conference and report requirements of Fed. R. Civ. P. 26(f); and (3) the related Fed. R. Civ. P. 26(d) bar on discovery before the conference. Numerous other deadlines set by federal and local rule (e.g., Fed. R. Civ. P. 26(a)(2)-(3) and Local Civil Rule 26.05) remain in effect absent order to the contrary. *See generally*, Local Civil Rule 16.02(C) (listing most federal and local rule deadlines).

- (E) Any unusual questions of law concerning admission of evidence or procedure likely to arise in the trial of the case.
- (F) ~~Have you~~ Whether the possibility of a compromise settlement has been discussed and explored with opposing counsel—the possibility of a compromise settlement? State specifically whether an offer has been made and the position of each party as to settlement; if no attempt to settle has been made, state the reasons. If nonjury, counsel should not disclose settlement negotiations.
- (G) The names of the witnesses expected to be called and a summary of their anticipated testimony. ~~Is~~ Whether the exclusion of a witness or witnesses is requested pursuant to Federal Rule of Evidence 615? If no request is made herein, it shall be deemed waived.
- (H) The damages claimed should be set forth in detail, including, but not necessarily limited to:
- (1) Where permanent injuries are claimed, their nature must be described with particularity, and plaintiff's life expectancy must be given. Attach copies of medical reports and doctors' statements where available;
 - (2) Special damages claimed must be specified in detail. Thus, in personal injury cases, medical, nursing, hospital, and similar expenses should be itemized by giving the names of persons and institutions and the amount paid to or owing each. If property damage is claimed, state the cost of repairs and names of persons making them; or, if incapable of repair, the value of the property immediately before the accident and immediately afterwards;
 - (3) If loss of earnings or profits is claimed, state the amount, the manner of computation, the period for which loss is claimed, and the name of employer, if applicable;
 - (4) In death cases, state the age, employment, rate of earnings, marital status, and life expectancy of deceased; also, the names, ages, and the relationship of the dependents;
 - (5) The defendant should specify its position concerning damages.

- (I) Where a contract or a writing is involved:
- (1) If a written contract or a writing is involved, a copy should be furnished to the Court, and the portions in controversy particularized, with a statement as to the claimed construction thereof, and performance or nonperformance thereof, or obligation in connection therewith;
 - (2) If the contract is oral, its substance should be given; and where there is a dispute concerning its terms, the controverted terms should be specified and the same issues covered as above mentioned as to written contracts.
- (J) Where the relief sought is not covered by (H) above or is in addition thereto, state the nature of the relief sought and the reason(s) such relief should or should not be granted.
- (K) Counsel's best estimate of the time required for trial.
- (L) Any special matters to which the Court's attention is sought or required.
- (M) Any reason why the case cannot be tried at the term for which it is set for trial.
- (N) The final list of exhibits intended to be used in the trial of the case with any objections noted. This list shall be served on opposing counsel.
- (O) Attached to the pretrial brief should be counsel's request for voir dire questions (*see* Local Civil Rule 47.04) and request for jury instructions. Copies of the requests for voir dire questions and jury instructions shall be ~~provided to~~ served on opposing counsel. If the requests for voir dire and jury instructions are not submitted five (5) days prior to the selection of the jury, counsel shall be deemed to have waived the right to submit voir dire questions and jury instructions, unless made necessary by events at trial.

It is understood that absent order to the contrary, the information required by Local Civil Rule 26.05(A)-(M) is for the sole use of the Court and will not be furnished to opposing counsel without consent of counsel. Therefore, these portions of the trial brief ((A)-(M)) are not ~~filed~~ served absent order to the contrary. Information contained in (N) and (O) shall be ~~filed and served~~ on opposing parties.

Proposed findings and conclusions should not be submitted with the pretrial brief unless requested by the Court.

26.06: *Supplementation of Civil Pretrial Briefs and Disclosures.* The information required by Local Civil Rules 26.05 and 26.07 may be amended or supplemented as necessary if the case is not reached for trial during the designated term or if other circumstances require amendment or supplementation.

26.07: *Trial Exhibits.*

- (A) In addition to the Fed. R. Civ. P. 26(a)(3) duty to file and serve exhibit lists and objections and serve objections thereto, and unless otherwise ordered by the Court, attorneys for each side shall meet at least five (5) business days prior to the date set for submission for pretrial briefs for the purpose of marking and exchanging all exhibits (other than solely for impeachment purposes) intended to be used at trial. Where possible, counsel shall agree on the admissibility of all trial exhibits. In the event there is an unresolved objection to any exhibit, the attorneys shall notify the Court of such objection in the pretrial brief.

Failure to meet, mark, and exchange exhibits may be deemed a waiver of the right to use such exhibits. Failure to raise a timely objection under Fed. R. Civ. P. 26(a)(3) or to preserve that objection by compliance with this Local Civil Rule may be deemed a waiver of the right to raise objections at trial.

Objections shall be specific but succinct, stating the legal grounds and short argument. For example, "lack of foundation -- plaintiff cannot demonstrate that these documents are business records kept in the regular course of business; relevancy -- these documents relate to a corporation other than the defendant in this action," would be sufficient.

- (B) All exhibits must be numerically marked with exhibit stickers consistent with the type provided by the Clerk of Court. An exhibit list must be ~~submitted~~filed in all cases. (*See also* Fed. R. Civ. P. 26(a)(3) (pretrial disclosures) and Local Civil Rule 83.II.01 (handling of exhibits).)
- (C) This Rule requires a physical exchange of exhibits marked as they will be used at trial. Once these exhibit designations are made, exhibits may be excluded or withdrawn but *shall not be renumbered*. A meeting to exchange exhibits and to determine if agreement can be reached as to any objections to exhibits shall be held on or before the "meet, mark, and exchange" date. If marked exhibits have not previously been physically exchanged, they shall be exchanged on this date.

26.08: Protective Orders and Agreements. There is no requirement for prior judicial approval of protective agreements intended to limit access to and use of materials gained in discovery. Protective agreements or orders which address the filing of documents with the Court shall, however, require compliance with Local Civil Rule 5.03, or such other procedures as the Court directs, before any document is filed under seal. Discovery materials protected by a court order issued pursuant to Fed. R. Civ. P. 26(c) shall not be filed without compliance with Local Civil Rule 5.03 unless the order provides other procedures to satisfy the requirements of governing case law. See Local Civil Rule 5.03.

JUDGMENTS AND COSTS

54.01: *Assessment of Jury Costs.* Whenever any civil action scheduled for a jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including Marshal's fees, mileage, and per diem, may be assessed equally against the parties or otherwise assessed as determined by the Court, unless the Clerk of Court is notified at least one full business day prior to the date on which the action is scheduled for trial or in sufficient time to notify jurors that their presence will not be required.

54.02: *Petition for Attorney's Fees.* Any petition for attorney's fees shall comply with the requirements set forth in *Barber v. Kimbrell*, Kimbrell's, Inc., 577 F.2d 216 (4th Cir.), ~~cert. denied~~, ~~439 U.S. 934~~ (1978), and shall state any exceptional circumstances and the ability of the party to pay the fee. Any memorandum in opposition to a petition for attorney's fees must be filed with the Clerk of Court within fifteen (15) days of the ~~filing~~service of the petition. *See also* Local Civil Rule 83.VII.07 (attorney's fees in social security cases).

[Prior time limits located in this section were deleted effective December 1, 2000. Counsel should note that the time limits for attorney fee applications found in Fed. R. Civ. P. 54 are significantly shorter than previously set by the predecessor to this Local Civil Rule.]

54.03: *Application for Costs.* The items set forth below detail the costs normally allowed in the District when filing Bill of Costs pursuant to 28 U.S.C. § 1920 and Fed. R. App. P. 39(e) and are subject to final approval by the Court. Bill of costs shall be filed within the time limits set by Fed. R. Civ. P. 54(d)(2)(B) for applications for attorney's fees. Noncompliance with this time limit shall be deemed a waiver of any claim for costs.

(A) *Fees of the Clerk of Court* (28 U.S.C. §§ 1914, 1917, and 1920(1); Fed. R. App. P. 39(e)).

(1) *Taxable:*

- (a) Filing fee of complaint;
- (b) Filing fee of notice of appeal;
- (c) Filing fee in state court in a removal case;
- (d) Costs for preparation of record on appeal;
- (e) Fee charged by out-of-district court for filing notice to take *de bene esse* depositions; and

Rule 73.02: Assignment of Duties to Magistrate Judge

designated for the division in which the case is brought.

- (2) ~~Automatic references~~ References. The Clerk of Court shall assign the following matters to a full-time ~~magistrate judge~~ Magistrate Judge upon filing:
- (a) All motions for remand, dismissal, or judgment on the pleadings in actions filed under 42 U.S.C. § 405(g) for review of an administrative determination regarding entitlement to benefits under the Social Security Act and related statutes;
 - (b) All motions for leave to proceed *in forma pauperis*;
 - (c) All pretrial proceedings in applications for post-conviction review under the provisions of 28 U.S.C. § 2241 *et seq.*, 28 U.S.C. § 2254 *et seq.*, and mandamus relief as well as for relief sought by persons challenging any form of custody under other federal jurisdictional statutes. This Local Civil Rule does *not* apply to actions arising under 28 U.S.C. § 2255.
 - (d) All pretrial proceedings in prisoner petitions for relief under 42 U.S.C. § 1983;
 - (e) All pretrial proceedings involving litigation by individuals proceeding *pro se*;
 - (f) All pretrial proceedings in prisoner petitions which do not challenge prison conditions, conditions of confinement, or any other form of custody;
 - (g) All pretrial proceedings involving litigation arising out of employment discrimination cases invoking federal statutes which proscribe unfair discrimination in employment, including, but not limited to, 42 U.S.C. §§ 1981-1986; 42 U.S.C. § 2000e-2; 42 U.S.C. § 2000e-16(a); 29 U.S.C. § 206(d); 29 U.S.C. §§ 621-634; or 29 U.S.C. § 794.-

~~(C)~~ General

(C) Method of Case Assignment.

- (1) Civil Cases. For the convenience of administration, unless otherwise specified herein or by specific order of the Chief Judge of the District,

references of civil cases shall be assigned by division as follows:

- (a) The Magistrate Judge(s) in Columbia shall be assigned cases filed in the Columbia, Orangeburg, Aiken, and Rock Hill Divisions.
 - (b) The Magistrate Judge(s) in Charleston shall be assigned cases filed in the Charleston and Beaufort Divisions.
 - (c) The Magistrate Judge(s) in Greenville shall be assigned cases filed in the Greenville, Spartanburg, Anderson, and Greenwood Divisions.
 - (d) The Magistrate Judge(s) in Florence shall be assigned cases filed in the Florence Division.
 - (e) If there is more than one Magistrate Judge assigned to a given courthouse, the cases covered by (a) - (d) above shall be assigned to those Magistrate Judges on a rotational basis.
 - (f) All cases challenging conditions of confinement filed by a federal prisoner incarcerated in this judicial district shall be assigned to all Magistrate Judges on a rotational basis.
- (2) Social Security Cases. Social Security cases shall be assigned to the full-time Magistrate Judges on a rotational basis without regard to division of filing.
- (3) Post-Conviction Review and Prisoner Cases. Petitions for habeas corpus relief, mandamus relief and civil rights cases described in Local Civil Rule 73.02(B)(2)(c) and (d) shall be assigned to full-time Magistrate Judges on a rotational basis without regard to division of filing.
- (4) Other Prisoner Cases. Complaints filed by prisoners not challenging conditions of confinement shall be assigned on a divisional basis to a full-time Magistrate Judge.
- (5) Employment Discrimination Cases. Employment discrimination cases shall be assigned in the division where they are filed. Cases filed in the Columbia, Rock Hill, Orangeburg, and Aiken Divisions will be divided on a rotational basis between the full-time Columbia Magistrate Judges.
- (6) Pro Se Litigants with Prior Cases. New cases filed by pro se litigants

with prior cases shall, if possible, be assigned to the Magistrate Judge and District Judge to whom the prior case was assigned unless the prior case was consolidated due to common issues of law or fact.

(7) Nothing in this subsection shall limit the district-wide jurisdiction of a Magistrate Judge, prohibit a District Judge from assigning a specific matter to a specific Magistrate Judge, or prohibit the reassignment of a specific matter between Magistrate Judges on the concurrence of the Magistrate Judges and District Judge involved.

(D) General. Nothing in these Local Civil Rules shall preclude the Court or a ~~district judge~~ District Judge from reserving any proceeding for conduct by a ~~district judge~~ District Judge, rather than a ~~magistrate judge~~ Magistrate Judge. The Court, moreover, may by order modify the method of assigning proceedings to a ~~magistrate judge~~ Magistrate Judge as changing conditions may warrant.

73.03: *Special Provisions for Consent for Reference of Civil Cases under 28 U.S.C.-§ 636(c).*

(A) *Notice.* Unless otherwise directed by the Court, the Clerk of Court shall notify the parties in all civil cases that they may consent to have a ~~magistrate judge~~ Magistrate Judge conduct any and all proceedings in the case and order the entry of a final judgment. ~~Such notice shall be handed or mailed to the plaintiff or plaintiff's representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served. Additional notices may be furnished to the parties at later stages of the proceedings and may be included with pretrial notices, trial rosters or instructions.~~

~~(B) Execution of consent~~ Notice may be provided by attachment of an appropriate form document to the scheduling order or pre-scheduling order. In categories of cases in which scheduling orders are not generally issued (i.e., cases exempt under Fed. R. Civ. P. 26(a)(1)(E)) and which are not exempted by the Court from this requirement, the Clerk of Court will forward the notice to all parties after a defendant appears.

(B) Execution of Consent. The parties may consent by submitting a proposed consent to reference signed by all parties.

(C) *Approval.* After the consent forms have been signed and filed, the Clerk of Court shall transmit a proposed order of reference to the ~~district judge~~ District Judge to whom the case has been assigned for approval in his or her discretion.

RULES BY DISTRICT COURT

ATTORNEYS AND STUDENT PRACTICE

83.I.01: *Roll of Attorneys.* The Bar of this Court consists of those attorneys heretofore admitted and those attorneys hereafter admitted as prescribed by Local Civil Rule 83.I.01-.03.

83.I.02: *Eligibility.* A member in good standing of the Bar of the Supreme Court of South Carolina is eligible for admission to the Bar of this Court.

83.I.03: *Procedure for Admission.* Before being presented to the District Court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:

- _____ (A) Is a member in good standing of the Bar of the Supreme Court of South Carolina;
- _____ (B) Has studied the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, the South Carolina Rules of Professional Conduct (Rule 407 of the South Carolina Appellate Court Rules), and the Local Civil and Criminal Rules of the Court; and
- _____ (C) Has either completed the required trial experiences listed in Rule 403 of the South Carolina Appellate Court Rules for the examination and admission of persons to practice in South Carolina or has completed a "judicial clerkship with equivalent courtroom experience" as defined below and certified by the judge for whom the clerkship was served.

A "judicial clerkship with equivalent courtroom experience" requires that all of the following be satisfied: (1) the applicant must have served for at least one year as a law clerk to a federal or state judge; (2) the applicant must have observed the equivalent of at least four complete trials (jury selection through verdict); (3) the applicant must have observed at least six oral arguments of motions or appeals; and (4) at least two of the trial equivalents and two of the oral arguments must have been in the federal court system. An applicant may demonstrate satisfaction of these requirements by submitting a certification signed by the judge for whom the clerkship was served in the form provided by the Clerk of Court. To the extent an applicant relies on experiences beyond the clerkship to satisfy the requirements of (2)-(4) above, he or she should attach a partially completed state court form (S.C.C.A. Rule 403(e)) or comparable documentation of the required courtroom experience.

In addition to these certifications, the written application shall contain the certification of two

attorneys who are members in good standing of the Bar of this Court that, to the best of their knowledge, information, and belief, the applicant is of good moral character and professional reputation and meets the requirements for admission.

The applicant shall file the application, accompanied by a fee of one hundred dollars (\$100), with the Clerk of this District Court. If the application is in order and upon approval of the Court, the Clerk of Court shall then issue to the applicant a certificate of admission to the Bar of this Court.

83.I.04: *Representation by Local Counsel who Must Sign all Pleadings.* Litigants in civil and criminal actions, except for parties appearing *pro se*, must be represented by at least one member of the Bar of this Court who shall sign each pleading, motion, discovery procedure, or other document served or filed in this Court. The attorney identification number is also required on each pleading, motion, discovery procedure, or other document served or filed in this District Court.

83.I.05: *Appearances by Attorneys not Admitted in the District.* Upon motion of an attorney admitted to practice before this Court, any person who is a member in good standing of the Bar of a United States District Court and the Bar of the highest court of any state or the District of Columbia may be permitted to appear in a particular matter in association with a member of the Bar of this Court. A motion seeking admission under this Rule shall set attach a document signed by the person seeking admission, setting forth the movant's his or her qualifications for admission and the movant's agreement to abide by the ethical standards governing the practice of law in this Court pursuant to. See Local Civil Rule 83.I.08 and Local Criminal Rule 57.I.8.

The motion shall include a certificate of consultation. See Local Civil Rule 7.02.¹⁷ The motion shall also be accompanied by an application fee of seventy five dollars (\$75). The appearance of such a person in a particular action(s) shall confer jurisdiction upon this Court for any alleged misconduct of that person in all matters related to the action(s). The Court may revoke admission under this Local Civil Rule at its discretion.

83.I.06: *Pleadings, Service, and Attendance by Local Counsel in Cases Where Out-of-State Attorneys Appear.* Pleadings and other documents filed in a case where an attorney appears who is not admitted to the Bar of this Court shall contain the individual name, firm name, address, and phone number of both the attorney making a special appearance under this Local Civil Rule and the associated local counsel. In such a case, the service of all pleadings and notices as required shall be sufficient if served upon only the associated local counsel. Unless excused by the Court, the associated local counsel shall be present at all pretrial conferences, hearings and trials and may attend discovery proceedings. Local counsel is expected to be prepared to actively participate

¹⁷ The consultation requirement found in Local Civil Rule 7.02 is applicable to motions under this Local Civil Rule. It is the general practice in this District to grant motions under Local Civil Rule 83.I.05 immediately upon receipt by the Court, if they are proper in form and absent notice that opposing counsel has indicated an intention to object. Prior consultation and disclosure of opposing counsel's stated intention are necessary to facilitate this process.

if necessary.

83.I.07: *Withdrawal of Appearance.* No attorney whose appearance has been entered shall withdraw his or her appearance or have it stricken from the record except with leave of the Court. Any request to withdraw shall: (1) be filed with a certification that the motion has been served on the client or with a consent to withdrawal signed by the client; (2) shall provide the Court with a mailing address and phone number for the client; and (3) if the client is a corporation, shall confirm that the client has been advised that a corporation cannot proceed without counsel and that counsel must be admitted in this District.

83.I.08: *Rules of Disciplinary Enforcement ("RDE").* All counsel admitted to practice before this Court or admitted for the purpose of a particular proceeding (*pro hac vice*) shall be admitted subject to the following rules, conditions, and provisions.

RDE RULE I
ATTORNEYS CONVICTED OF CRIMES

- (A) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears that the interests of justice require the same.
- (B) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of any other to commit a "serious crime."
- (C) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based, in whole or in part, upon the conviction.
- (D) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court, in addition to suspending that attorney in accordance with the provisions of this Local Civil Rule, shall also refer the matter to counsel for the